Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 1975

NO. 75-5983

****

CHARLES D. THOMPSON,
Petitioner

v.

THE STATE OF NORTH CAROLINA,
Respondent

****

BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

****

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OPINION BELOW

From verdicts of guilty of first degree murder and kidnapping and judgments of death as to the murder charge and life imprisonment as to the kidnapping charge entered by the Superior Court (Trial Court) on the 1st day of June, 1974, defendant appealed to the Supreme Court of North Carolina. The opinion of the Supreme Court of North Carolina affirming the judgment of the trial court is reported at 287 N. C. 303, 214 S. E. 2d 742 (1975).

JURISDICTION

The jurisdiction of this Court has been invoked pursuant to 28 U. S. C. §1257(3).

QUESTIONS PRESENTED

I.

WERE THE INCRIMINATING STATEMENTS MADE BY DEFENDANT WHILE IN CUSTODY BEFORE TRIAL FREE AND VOLUNTARY?

II.

WAS THE DEFENDANT DURING HIS IN-CUSTODY PRETRIAL INTERROGATION DENIED THE ASSISTANCE OF COUNSEL?

III.

IS THE DEATH PENALTY IMPOSED CRUEL AND UNUSUAL PUNISHMENT?

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

AMENDMENT VII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On Monday, May 13, 1974, Petitioner was called to trial before the Superior Court of Rutherford County at Rutherfordton, North Carolina, on separate bills of indictment charging him with first degree murder and kidnapping. Following a jury verdict of guilty on both charges, Petitioner was sentenced to death on the murder charge and life imprisonment on the kidnapping charge.

Petitioner appealed his convictions and sentences directly to the Supreme Court of North Carolina where they were affirmed in an opinion and judgment on June 6, 1975.

STATEMENT OF FACTS

On Sunday, February 17, 1974, defendant Charles Thompson and P. G. Woods rode to work together at Fieldcrest Mills near Forest City, North Carolina, in Woods' car. Before going to work, Woods got some matches from the glove compartment of the car; at that time, about 11:00 P.M. there was a .22 caliber pistol in this compartment. The car was left locked. At 5:00 A.M. on Monday, February 18, 1974, Woods, at Thompson's request, gave Thompson the keys to his car. When Woods got off from work around 7:00 A.M. he noticed his car had been moved in the parking lot; however, Thompson was still in the car. They went home; Woods parked his car at his home but left it unlocked. About 3:00 P.M. that afternoon, Woods went out to his car to get some matches from the glove compartment; at this time, he noticed the pistol was gone. He immediately reported the gun had been stolen to the Forest City Police Department. The gun was loaded with six rounds of ammunition at the time it was reported missing.

On Monday, February 18, 1974, Mr. Van Gudger Watkins purchased a 1972 Chevrolet four-door hardtop car with 25,505 miles from his nephew, Terry Watkins.

On Tuesday, February 19, 1974, about 7:30 P.M., Charles Thompson was walking on Trade Street in the Town of Forest City, North Carolina, near a store called the Saddle Shop. At that time, Mr. Van Watkins drove up;

parked his car; reached into his pocket to get some keys; and upon doing so a roll of money fell out. At that point Charles Thompson decided to rob Watkins. Thompson followed Watkins into the shop; pulled a .22 caliber pistol; told Watkins to get in his car; told Watkins to drive to the end of a dead-end road at a cemetery at Doggett's Grove. Thompson proceeded to rob Watkins and then shot him five times as well as hitting him in the head with a piece of concrete.

Thompson drove Watkins' car to Shelby where he met Vanessa Whitworth at her house about 8:30 P.M. They drove to the Governor's Inn Motel to a room rented by Thompson. She observed the word "Impala" on the dashboard of the car as well as a jacket in the back seat. While at the motel, she saw a gun in a drawer in the motel room which she handed to Thompson; he put three empty shells from the gun into an ash tray in the room. Thompson had some money with him at the time. They left the motel about 10:40 P.M.; Thompson appeared neither nervous or excited.

About 10:30 P.M., February 19, 1974, the Rutherford County Sheriff's Department received a call from Watkins' family reporting that he was missing. The Sheriff's Department and the Forest City Police Department began searching the area for traces of Watkins.

During the day of Wednesday, February 20, 1974, around 11:15 A.M., Watkins' automobile was found by the Forest City Police Department at the Dunbar School area. The car, a 1972 Chevrolet Impala, had been partially burned; there was a torn owner's manual in the car as well as an orange jacket with trim around the sleeves and collar. Around 7:45 P.M. on that date, Watkins' body was found; it was photographed and later removed to the hospital morgue.

On February 21, 1974, an autopsy was performed on Watkins' body by Dr. J. Paul Hurt; this revealed four gunshot wounds in the body as well as compound skill fractures. The four bullets were removed and given to police officers.

On Monday, February 25, 1974, Charles Thompson hid the .22 caliber pistol in a tree off Jackson Street.

Charles Thompson was brought to the Rutherford County Sheriff's Department by his father, a former Deputy Sheriff who was then employed as a police officer with the Town of Spindale, at the request of the Sheriff on February 27, 1974, a Wednesday, about 4:00 P.M. His father was present along with one other officer; Thompson was advised of his rights and signed a written waiver at his father's insistence. Thompson was not charged with any crime at that time and he was not under arrest. This session lasted about an hour and twenty minutes, ending at 5:20 P.M.; it related to the report of P. G. Woods concerning his stolen pistol. Thompson was not released but kept in custody in a cell based on a telegram from the North Carolina Parole Board revoking his parole for a prior offense.

A second interview was held about eight and one-half hours later at 1:35 A.M. on Thursday, February 28, 1974, in the Sheriff's Office. His father was present part of that time. This session lasted until after 5:00 A.M.; a number of officers were present. At this time he was accused of the Watkins' murder but no warrant was issued.

A third interrogation took place around 1:55 P.M., February 28, 1974; he was advised of his rights; this session lasted to around 3:00 or 4:00 P.M.; a tape was made of the conversation which Thompson later signed.

A fourth interrogation was held at 7:50 P.M. on the evening of February 28, 1974. A written waiver of rights was obtained; no recording of the session was made and a number of law enforcement personnel were present. Thompson still had not been charged with the murder at this time. Thompson appeared nervous and sleepy.

A fifth session occurred on March 1, 1974, a Friday, at 2:43 P.M.; at this time, Thompson had been formally charged with the murder; again, a number of officers were present and no recording was made. This episode lasted about an hour and a half.

A sixth questioning took place on Saturday, March 2, 1974, at 0 P.M. This session was taped; the tape was placed in evidence at the trial; Thompson cried part of the time; he appeared remorseful and he confessed to the murder. That evening, about 8:00 P.M. Thompson spoke to his mother and father at the jail; he was crying, trembling and very upset.

Thompson said the Sheriff had threatened him with the death penalty if he did not tell the truth. His mother later testified that Thompson had a history of mental problems; that he had taken medicine for them at one time; that he had an I.Q. of 55; that he was very suggestable; and that he had completed only the ninth grade in school. This was confirmed by Dr. Robert Rollins. About 10:30 P.M. on the night of March 2, 1974, Thompson led officers to a tree where they found a pistol hidden which ballistic tests later confirmed was used to kill Watkins.

A lawyer was appointed to represent Thompson on March 6, 1974.

ARGUMENT

I.

THE PRETRIAL STATEMENTS MADE BY PETITIONER WHILE IN CUSTODY WERE FREE AND VOLUNTARY.

In the first question presented by the Petitioner, he asserts his confession was not voluntary because of the totality of the relevant circumstances which culminated in the confession which was ultimately introduced into evidence before the jury. He argues that even though he was advised of his constitutional rights before each interrogation session and his father was present at some of these sessions his free will was nevertheless overborne because of the extensive nature of the questioning; threats that were made and his personal characteristics.

In the area of pre-trial, in-custody confessions, the voluntariness of the confession is the critical factor. Even though the confession may be entirely reliable as shown by the other corroborating evidence, it is, nevertheless, inadmissible if involuntary. Rogers v. Richmond, 365 U. S. 534 (1961) There can be no doubt that the final confession by the Petitioner was reliable for there was considerable corroborating evidence in the record to substantuate almost every detail of the confession.

Reliability, however, is a part of the voluntariness test. As articulated by the decisions of this Court, this test is designed to bar admission of those confessions which:(1) are of doubtful reliability

because of the practices used to obtain them (for example, physical beatings, Brown v. Miss., 297 U. S. 278 (1936)); (2) are obtained by offensive police practices even if otherwise reliable (for example, trickery, Rogers v. Richmond, supra); or (3) are obtained under circumstances in which the defendant's free choice was significantly impaired (for example, by the use of drugs, Townsend v. Sain, 372 U. S. 293 (1963)).

In applying the voluntariness test, this Court has examined the totality of circumstances surrounding each confession. Haynes v. Washington , 373 U. S. 503 (1963). The factors deemed most important have been: (a) physical abuse, Lee V. Miss., 332 U. S. 742 (1948); (b) threats, Payne v. Arkansas, 356 U. S. 560 (1958); (c) extensive questioning, Turner v. Pennsylvania, 338 U. S. 62 (1949); (d) incommunicado detention, Davis v. North Carolina ,384 U. S. 737 (1966); (e) denial of right to consult with counsel, Fay v. Noia, 372 U. S. 391 (1963); and (f) the characteristics and status of the suspect, such as his lack of education, Culombe v. Connecticut , 367 U. S. 568 (1961), emotional instability, Spano v. New York, 360 U. S. 315 (1959), youth, Gallegos v. Colorado, 370 U. S. 49 (1962), or sickness, Jackson v. Denno, 378 U. S. 368 (1964).

Because it is undisputed that Petitioner was advised of his constitutional rights before each interrogation session, the recent case of Miranda v. Arizona, 384 U. S. 436 (1966), has no application; consequently, the voluntariness test, as set forth above, must be applied. From the record, it appears that the Petitioner was not subjected to physical abuse or incommunicado detention. There is some indication that the elements of threats, extensive questioning and the characteristics and status of the Petitioner are presented by the record. In question two, the element of denial of the right to consult counsel is presented separately by the Petitioner; accordingly, this aspect of the case will be considered there.

(a)

THREATS

There is no evidence in the record to indicate the police made threats of physical violence against the person of Petitioner or that they threatened any members of Petitioner's family. There is some evidence that one of the interrogating officers, Sheriff Blaine Yelton, told Petitioner that if he did not tell the truth he would recommend the death penalty. Sheriff Yelton denied he had ever made such a threat.

It also appears that Petitioner was confronted with his prior criminal record on at least one occasion by Sheriff Yelton although the exact context in which this confrontation took place is not clear. At the same time, the record discloses that Petitioner's father and mother were present during some of the sessions. These supportative influences, the respondent submits, were sufficient to overcome the coercive effect, if any, that references to the death penalty and his past criminal history might have had.

Payne v. Arkansas, supra, relied on by Petitioner is distinguishable on its facts. Payne's confession was induced because the chief of police threatened to turn him over to a mob of 30 to 40 people who would get him. It was this threat of mob action coupled with the incommunicado detention and lack of opportunity to have counsel or any members of this family present which tipped the scales. Moreover, the evidence of these threats was undisputed. In the case at bar, the evidence is disputed, members of the family were present and no mob was present.

(b)

EXTENSIVE QUESTIONING

The record indicates questioning began around 5:20 P.M. on February 27, 1974, and continued, off and on, until March 2, 1974, around 7:00 P.M. The Petitioner was in custody the entire four days with his father present part of the time and with both his father and mother present on March 2, 1974. The record indicates questioning sessions were held during the night as well as during the day. The record further indicates that Petitioner started out denying any involvement in the crime and then gradually changed his story until the confession of March 2, 1974, after a private session with his father and mother. It is unclear from the record how much sleep Petitioner had between sessions or how much he had to eat although it does appear he had a private call and that his aunt was employed as a cook at the jail where he was being held.

Turner v. Pennsylvania, supra, involved an interrogation session of four days exceeding a total of 23 hours; the suspect was not informed of his rights; he was not permitted to see friend or family and he was falsely told that other suspects had "opened up." Finally, the arrest was

not made until six months after the crime.

In the case at bar Petitioner was advised of his rights, his family was present, he was allowed periods of rest and only about 12 hours of actual interrogation took place in six or seven sessions over the four day period. He was arrested almost immediately after the crime. Although the questioning was extensive, the Respondent submits, under all of the facts and circumstances of the case, it did not amount to such coercion as to render the resulting confession involuntary.

(c)

CHARACTERISTICS AND STATUS

It is undisputed that Petitioner had a history of mental and emotional problems starting at age 13; that at one time he was under medication for this condition; that his I.Q. was 55; that he functioned at a fifth grade level although he went through the 9th grade in school; that he could function as an employee at a textile plant; that he could, with difficulty, pass a driver's license test; that he was easily influenced and intimidated; that he was 19 years of age; that he was black and that he had a criminal record. It also appears his father had been a former Deputy Sheriff but, at the time of the crime, he was employed by the Town of Spindale as a police officer.

It is this aspect of the case which is stressed most heavily in the petition to support the argument the confession was not voluntary. The Respondent argues that Petitioner's family were present during most, if not all, of the interrogation sessions. Moreover, it appears that Petitioner's father conducted his own investigation of the crime.

To deny that four days of intensive interrogation, even with family support, is not coercive is absurd. The Supreme Court of North Carolina, in its opinion, recognized this. This Court felt, however, that Petitioner had sufficient mental capacity to know what the effect of his confession was. It further felt that the supportative presence of his family was sufficient to prevent an outright lie by Petitioner. Little can be added to this view other than to point out that the resulting confession was reliable; i.e., Petitioner led the police to where he hid

the murder gun. Moreover, it appears that Petitioner admitted to his mother in a private talk that he did the killing because his victim threatened to identify him.

The case of Culombe v. Connecticut, supra, cited and relied on most heavily by Petitioner can be distinguished from the case at bar. For example, there was no physical evidence or other witnesses to corroborate Arthur Culombe's confession; his father or other family members were not present in an independent capacity; he was questioned for four nights and five days before he confessed; he was being interrogated about a whole series of crimes rather than one specific offense; he was never informed of his constitutional rights; he requested counsel which was denied; his wife and daughter were used by the police to induce the confession; the interrogation was designed to elicit a confession rather than develop information to check his story or develop other leads; he was given a "sham" hearing in a police court; and the police accused him of lying on numerous occasions. It was not merely his low mentality and illiteracy which produced the Court's conclusion the confession was involuntary, but rather, the combination of all these circumstances. In summary, Culombe presented a much more aggravated situation. The Respondent submits that Culombe should not control in this case.

II.

THE PETITIONER DURING HIS IN-CUSTODY PRETRIAL INTERROGATION WAS NOT DENIED THE ASSISTANCE OF COUNSEL.

The Petitioner argues he was denied the assistance of counsel during his pretrial questioning even though he repeatedly waived this right. The Petitioner does not contest the evidence which established beyond question that Petitioner did, in fact, waive his right to counsel and that this waiver was done both with and without consultation with his father. Appointed Counsel was waived because the family intended to employ private Counsel and because Petitioner's father was encouraging him to tell the truth.

The Respondent submits the record shows that Sheriff Yelton repeatedly advised both Petitioner and his father of all his constitutional rights including the right to have counsel present and counsel appointed in the event he could not afford to hire one. Appropriate waiver forms were signed by Petitioner before each interrogation session. The Respondent submits this is a far different situation than the one presented in Escobedo v. Illinois, 378 U. S. 478 (1964) and Crooker v. California, 357 U. S. 433 (1958) relied on by Petitioner in his Petition. Both cases involved circumstances where the defendant repeatedly requested the assistance of his retained counsel who was refused access to his client by the police and the police never warned him of his constitutional rights. See also Miranda v. Arizona, 384 U. S. 436 (1966).

Finally, in his Petition, the Petitioner acknowledges that all applicable North Carolina statutory and case law procedures were followed by the police during the course of the interrogation. Counsel was in fact appointed to represent the Petitioner, albeit after his confession.

In conclusion, there is nothing in the decisions to date which require the appointment of counsel at the pretrial stage when the defendant either plans to hire his own counsel or else desires to proceed without the advice of counsel. All that is required is for the police to tell the accused about his rights and give him an opportunity to exercise them, if he so desires. In the words of the old saw: they are required to provide the water and lead the horse thereto; they are not required to make the horse drink even if it would be to his best interest to do so.

Speculation that Petitioner and his father did not know what they were doing when they agreed to waive counsel during the interrogation session is fruitless. Courts cannot compel defendants to make wise choices; all that can be done is to assure an atmosphere where defendant is informed of his options and then given an opportunity to exercise them free of coercion. The Respondent submits this was done. If Petitioner's decision was unwise, it is now too late to "unring the bell."

III.

THE DEATH PENALTY

Although the Petitioner has not raised this point in his Petition, the Respondent submits the death penalty imposed in this case is constitutional. The position of the Respondent in this regard has been fully set forth in its brief in Fowler v. North Carolina currently pending in this Court. Accordingly, the Respondent directs the Court's attention to its brief in that case.

CONCLUSION

It cannot be denied this case presents a close and difficult factual situation. Involuntary, forced confessions which are unreliable or which are produced by unconsciencable police methods have no place in any criminal proceeding. Feelings of sympathy always flow to youths of minority races who have had a difficult time in life.

The Respondent submits that, on balance, there has not been a sufficient showing of such oppressive coercion to render the confession inadmissible. It is uncontroverted the confession was reliable; that Petitioner was advised of his constitutional rights; that he had the advice and support of his father and mother through most, if not all, of his ordeal and that he was no stranger to police methods. There is also no doubt the crime was brutal and senseless and that society cannot tolerate conduct of this type. The conviction should be allowed to stand.

Respectfully submitted, this the _____day of January, 1975.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this day served a copy of the Brief In Opposition to the Petition upon opposing counsel by depositing copies of the same in the United States Mail, postage prepaid, addressed to:

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